

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CHRISTOPHER C.,

Claimant,

vs.

**NORTH LOS ANGELES COUNTY
REGIONAL CENTER,**

Service Agency.

OAH Case No. 2008060812

**DECISION DENYING
CLAIMANT'S APPEAL**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on November 7, 2008, in Van Nuys. The parties presented the documentary and testimonial evidence described below, and gave closing arguments. The matter was submitted for decision at the conclusion of the hearing.

Claimant was represented by his mother.¹

The North Los Angeles County Regional Center (NLACRC or Service Agency) was represented by Rhonda Campbell, Contract Officer.

ISSUE

Does Claimant have a developmental disability (autism) making him eligible for regional center services?

EVIDENCE RELIED UPON

Documentary: Service Agency exhibits 1-23.

Testimonial: Dr. Catherine Scarf, NLACRC Supervisor of Psychological Services; Claimant's mother.

¹ Claimant's last name, and the names of his family members, are omitted to protect their privacy.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Claimant is a three-year-old boy on whose behalf regional center services were requested from the Service Agency. Claimant's mother contends that her son may have autism.²

2. Claimant received Early Start services prior to his third birthday. In or about May of 2008, the Service Agency gave notice that those services would be terminated when he turned three. On a date not established, Claimant's mother requested the Service Agency to assess whether Claimant was eligible for regional center services for those older than three years of age under the Lanterman Developmental Disabilities Services Act (Lanterman Act). The Service Agency thereafter conducted the assessment described in further detail below.

3. By a Notice of Proposed Action, dated May 30, 2008, Claimant's mother was given written notice of the denial of her request, which notice stated that Service Agency staff had concluded that Claimant was not eligible for regional center services because he did not have any qualifying developmental disability.

4. On June 19, 2008, a Fair Hearing Request on Claimant's behalf was submitted by his mother, which timely appealed the Service Agency's denial of eligibility.

5. In the process of requesting that the initial hearing date set for this matter be continued due to her son's illness, Claimant's mother waived the time limit prescribed by law for holding the hearing and for the administrative law judge (ALJ) to issue a decision.

Claimant's Background and Developmental History

6. Claimant lives at home with his mother. He is cared for during the day by his maternal grandmother when his mother is working.

7. Claimant reached his early developmental milestones. During his second year, however, Claimant's mother began to notice a speech delay. Claimant was seen by his primary physician at the Facey Medical Group, where his speech delay was confirmed. At first, his doctor suspected the speech delay was due to lack of parent stimulation. Over time, however, his doctor thought otherwise and ultimately referred Claimant to the Service Agency to rule out autism and to obtain speech therapy services.

² In prior discussions with Service Agency staff, Claimant's mother had stated that her son was not mentally retarded and did not have cerebral palsy or seizure disorder. She indicated that she felt her son possibly had autism, and that she did not know if he was eligible under the "fifth category" because she is not a clinician and therefore not familiar with that condition.

8. Claimant received Early Start services from the Service Agency during his second year, based on a qualifying condition that his communication skills were delayed. An Individual Family Service Plan (IFSP) was developed for Claimant, in which various goals and services were stated. As demonstrated in the various reports issued from the providers of those services, Claimant met or exceeded many of his goals outlined in his IFSP and, overall, he made great improvement in all phases of his development. Claimant's mother was generally happy with his progress through the Early Start program. Since turning three years old, Claimant has transitioned to the Los Angeles Unified School District (LAUSD), where he attends a mixed special program classroom and receives speech therapy and behavioral services, among others.

9. Claimant continues to experience expressive and receptive language delays, as well as social and behavioral problems described in more detail below. Claimant's mother has requested services aimed at such delays be provided under the Lanterman Act.

The Service Agency's Assessment of Claimant

8. On or before March 3, 2008, Dr. Margaret Swaine, NLACRC Supervisor of Medical Services, conducted a medical review of Claimant's file and records. She noted that the records did not suggest that Claimant had cerebral palsy or epilepsy, and that his developmental evaluations indicated delays in language, adaptive and social skills. She concluded that there was no need for any further medical evaluation but that Claimant should be referred for a psychological evaluation.

9. (A) The Service Agency thereafter referred Claimant to licensed psychologist Gohar Gyurjyan for a psychological evaluation, which was conducted in March of 2008. Dr. Gyurjyan interviewed Claimant's mother, reviewed pertinent records and made clinical observations of Claimant. Dr. Gyurjyan's report states that Claimant displayed good eye contact, was interested in toys, cooperated well during testing, and was easy to engage. She also described Claimant as limited in his communication.

(B) Dr. Gyurjyan conducted formal testing of Claimant. The tests and results were as follows: WPPSI-III (cognitive functioning), full scale IQ of 102, described as within the average range; Vineland Adaptive Behavior Scales-II (adaptive functioning), subtest scores described as being in the adequate range; and the ADOS-G and ADI-R (tests aimed at determining the presence of autistic features), with subtest scores that were below the cut-off for autism, except for the development component of the ADI-R, which was elevated due to Claimant's language delay.

(C) Based on the above, Dr. Gyurjyan concluded that a diagnosis of mental retardation or autism was not warranted. Dr. Gyurjyan instead diagnosed Claimant with an Expressive Language Disorder, and suggested that Claimant be evaluated for speech and language services by his school system.

10. On July 2, 2008, an Interdisciplinary Eligibility Committee of the Service Agency conducted an eligibility determination meeting regarding Claimant, in which the above-described information was reviewed and discussed. The committee consisted of Carlo DeAntonio, M.D., NLACRC Director of Clinical Services; Heike Ballmaier, Ph.D., NLACRC Consulting Psychologist; and Dorothy Corbett, NLACRC Lead Consumer Service Coordinator. The committee concluded that Claimant was not eligible for regional center services, because he did not meet the criteria set forth in the DSM-IV-TR³ for autism and there was no evidence of mental retardation, cerebral palsy, epilepsy or the fifth category.

11. Dr. Catherine Scarf, NLACRC Supervisor of Psychological Services, testified during the hearing. She has experience diagnosing various early childhood developmental disabilities, including autism. She has reviewed Claimant's file, including the various progress reports issued by the agencies that provided Claimant's Early Start services, and she is familiar with the above-described conclusions of Dr. Swaine and Dr. Gyurjyan. Dr. Scarf agrees with the Interdisciplinary Eligibility Committee's conclusion that Claimant is not eligible for regional center services. She persuasively testified that, in her opinion, Claimant is not autistic. For example, the records she has reviewed indicate that Claimant engages in many behaviors that are inconsistent with autism, such as good eye contact, social reciprocity, imaginative play and a showing of interest in others. Also, Claimant's scores on Dr. Gyurjyan's tests for autism were below the cut-off for autism. While she acknowledges some behaviors have been identified for Claimant that are also seen in autistic children, Dr. Scarf believes there are insufficient symptoms that could lead to a diagnosis of an autistic disorder pursuant to the DSM-IV-TR. Claimant's IQ scores are solidly in the average range, which rules out mental retardation. Dr. Scarf also believes that Claimant's cognitive and adaptive functioning test scores rule out a fifth category diagnosis, in that she does not feel Claimant has a condition similar to or treated the same as one with mental retardation. Dr. Scarf found no evidence of cerebral palsy or epilepsy.

Other Evidence

12. Claimant's mother briefly testified in this matter. She is concerned about her son's future development and termination of the services that were provided to him under the Early Start program. As a child care worker for the City of Los Angeles, Claimant's mother comes into contact with a variety of children, including some who are autistic. She is concerned that her son has some of the symptoms she has associated with other autistic children, such as delayed communication skills, frequent tantrums and aggressiveness with other children.

³ Official notice is taken that the Diagnostic and Statistical Manual of Mental Disorders, fourth edition (DSM-IV-TR), published by the American Psychiatric Association, is a generally accepted tool for diagnosing mental and developmental disorders.

13. In a report issued by McRory Pediatric Services, who performed a functional emotional assessment of Claimant in October 2007, Claimant was found to have moderate delays in his social and emotional development, specifically difficulty with peer interactions and attention to adult-directed tasks.

14. Claimant was provided with floor time and occupational therapy services by the Child Development Institute (CDI). In a psychosocial report issued in April of 2008, CDI staff noted that Claimant sometimes has periods of dysregulation and problems with frustration when transitioning between activities or engaging in non-preferred activities. Dr. Scarf acknowledged during her testimony that such activity, in isolation, could be symptoms of autism, but that in Claimant's case they could just as easily be explained by other things, such as frustration caused by his inability to communicate. Dr. Scarf also noted that aggression with peers is not necessarily associated with autism.

15. Some of Claimant's other Early Start service providers issued closing reports as he was transitioned out of the program, e.g. L.E.A.P. for Infants (hereinafter "L.E.A.P.," who provided developmental evaluations) and C.S.U.N. (who provided early intervention programming). The closing reports from L.E.A.P. and C.S.U.N. both indicate that Claimant made good progress toward meeting his goals in all areas upon termination of services. The closing reports also indicate that Claimant still has significant communication delays, and either mild or moderate delays in his social interactions. Neither report suggests or states a cause for the remaining delays.

16. No evidence was presented indicating that any of the service providers from the Early Start program or any of the other experts who have come into contact with Claimant have diagnosed him with autism or any other qualifying developmental disability.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.)⁴ An administrative hearing is available under the Lanterman Act to appeal a regional center's denial of a service request. (§§ 4700-4716.) Claimant properly appealed from the Service Agency's denial of his service request and thus jurisdiction was established. (Factual Findings 1-5.)

2. Where an applicant seeks to establish eligibility for government benefits or services, the burden of proof is on him. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) More specifically, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (*Mason vs. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1127.) Thus, in determining whether an individual is eligible for services, the relevant inquiry is whether the claimant's expert witnesses' opinions

⁴ All further statutory references are to the Welfare and Institutions Code.

on eligibility “sufficiently refuted” those expressed by the regional center’s experts that claimant was not eligible. (*Id.*, at p. 1137.) The standard of proof in this case requires proof to a preponderance of the evidence, pursuant to Evidence Code section 115, because no other law or statute (including the Lanterman Act) requires otherwise.

3. An applicant is eligible for services under the Lanterman Act if it is established that he is suffering from a substantial disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or what is referred to as the “fifth category” (a condition similar to mental retardation or which requires treatment similar to that required by those who are mentally retarded). (§ 4512, subd. (a).) A qualifying condition must also onset before one’s 18th birthday and continue indefinitely thereafter. (§ 4512; Cal. Code Regs., tit. 17, § 54000, subds. (a), (b)(1), and (b)(3).)

4A. In this case, Claimant did not meet his burden of establishing that he is eligible for regional center services, in that he did not establish by a preponderance of the evidence that he has any qualifying developmental disability. (Factual Findings 1-16.)

4B. It was not established by a preponderance of the evidence that Claimant has autism. The Service Agency’s experts offered opinions which were credible and supported by the evidence, which demonstrated that Claimant does not have a qualifying developmental disability. Claimant has not presented evidence of any expert who has diagnosed him with autism, or any of the other four qualifying developmental disabilities. Though it was clearly demonstrated that Claimant suffers from a profound communication delay, such a diagnosis in and of itself does not qualify him for regional center services under the Lanterman Act. The fact that Claimant has exhibited some problems in the areas of communication and social skills does not necessarily mean that he is autistic. The Service Agency has provided plausible explanations for the cause of those problems, other than autism. Moreover, no meaningful evidence was presented showing that Claimant has restricted, repetitive and stereotypical patterns of behavior, interest or activities, which is a widely known and accepted hallmark of autism. In light of the above, it cannot be concluded that Claimant has sufficiently rebutted the opinions of the Service Agency’s experts that Claimant is not eligible for regional center services.

ORDER

Claimant Christopher C. failed to establish his eligibility for regional center services. Claimant’s appeal of the North Los Angeles County Regional Center’s determination that he is not eligible for regional center services is denied.

DATED: November 16, 2008

_____/s/_____
ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)